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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,200	03/20/2001	Douglas C. Dahlby	015685.P095	1747

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Gordon R. Lindeen III  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP  
Seventh Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025-1026

EXAMINER

VINCENT, DAVID ROBERT

ART UNIT	PAPER NUMBER
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2661

DATE MAILED: 08/03/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/813,200	<b>Applicant(s)</b> DAHLBY ET AL.	
	<b>Examiner</b> David R Vincent	<b>Art Unit</b> 2661	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25, 26 and 28 is/are rejected.
- 7) ☒ Claim(s) 24 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly

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or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-23, 25-26, 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Gorsuch (US 6,081,536).

As shown in Figs. 1-7, Gorsuch discloses a wireless system (Fig. 1; col. 3, lines 28-48), dynamically allocating streams (col. 2, lines 2-59, especially lines 31-34; col. 4, lines 26-32), based on capacity (col. 2, lines 2-59, especially lines 31-34; col. 4, lines 26-32; col. 6, lines 4-14; col. 6, lines 44-60; col. 7, lines 50-56; col. 8, line 16-col. 9, line 30), open

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streams before allocating (CDMA system sets up call set up procedures using e.g., Q.921, Q.931, col. 5, lines 9-20 and registration and control signaling procedures with base station(s), col. 2, lines 46-64; col. 7, lines 50-56; col. 8, lines 44-67), comparing to capacity (dynamically allocating and using the BW management function 134, cols. 4-9; col. 6, lines 44-60; using setup algorithms, col. 7, lines 40-55), comparing depth of queue (col. 6, lines 1-14; col. 8, line 16-col. 9, line 30), receiving messages from higher layers (Fig. 1 indicates the higher layers are used and theses are simply protocols which comply with the OSI model wherein higher layers send messages to lower layers and visa versa, col. 5, lines 5-32; col. 7, lines 23-56), creating packets and/or reassembling at the destination (using protocols as shown in Fig. 1 means packets are used and reassembled, e.g., col. 7, lines 50-56; Fig. 4 discloses the MUX), registering (CDMA system sets up call set up procedures using e.g., Q.921, Q.931, col. 5, lines 9-20 and registration and control signaling procedures with base station(s), col. 2, lines 46-64; col. 7, lines 50-56; col. 8, lines 44-67), distributing between streams (Fig. 4 and respective disclosure of using a plurality of subchannels), buffer thresholds (col. 6, lines 1-14; col. 8, line 14-col. 9, line 30, especially col. 9, lines 9-20), predicting the amount of data to be carried (using

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the setup procedures, col. 7, lines 23-56, using an estimate, col. 7, lines 50-56 or monitoring the queues Fig. 5), transmit queue reports (sending commands and indicating status of transmit queues and how much data if any is in queue and if more or less channels are needed, cols. 4-9; especially col. 7, lines 6-56), as specified in claims 1-23, 25-26, and 28.


3. Claims 24, and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R Vincent whose telephone number is 703 305 4957. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Olms can be reached on 703 305 4703. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David R Vincent  
Primary Examiner  
Art Unit 2661

July 27, 2004